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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,653	06/18/2001	M. Weldon Rogers III	18678-00009	1825

7590

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John S. Beulick  
Armstrong Teasdale LLP  
Suite 2600  
One Metropolitan Sq.  
St. Louis, MO 63102

EXAMINER

HONG, JOHN C

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 09/24/2003



12/23/03 Sent

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/883,653

Applicant(s)

ROGERS ET AL.

Examiner

John C. Hong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 15-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Applicant's election with traverse of Species I, claims 1-14 in Paper No. 9 is acknowledged. The traversal is on the ground(s) that Species I and II has same method steps. This is not found persuasive because the preamble of the independent method claims 1 and 15, Claim 1 is for retrofitting, while Claim 15 is for replacing. These two claims are deemed two different inventions.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 1, line 8, "coupling ... mechanism" is not clear. Why the step of coupling the pedestal base needed, without the step of uncoupling the pedestal base occurred previously?

(B) Claim 7, line 6, "said remaining enclosure member" lacks antecedent basis.

(C) Claim 8, line 4, "an electric...box" is not clear.

(D) Claim 10, lines 3-5, "a housing... housing" is not clear.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stumpf (U.S. Patent 6,045,187) in view of JP402299609.

Stumpf teaches a method of retrofitting an adjustable chair including a seat, a pedestal base, and a gas cylinder extending therebetween.

Stumpf fails to teach the steps of : uncoupling the gas cylinder from the chair; coupling a height adjustment mechanism to the chair that is configured to electrically adjust a height of the seat relative to the pedestal base, wherein the height adjustment mechanism includes a limit switch that is configured to limit an amount of movement of the height adjustment mechanism ; and coupling the pedestal base to the height adjustment mechanism.

'609 teaches the steps of : uncoupling the gas cylinder (22) from the chair; coupling a height adjustment mechanism (42) to the chair that is configured to electrically adjust a height of the seat relative to the pedestal base, wherein the height adjustment mechanism includes a limit switch (80) that is configured to limit an amount of movement of the height adjustment mechanism ; and coupling the pedestal base (12) to the height adjustment mechanism.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the steps of : uncoupling the gas cylinder from the chair; coupling a height adjustment mechanism to the chair that is configured to electrically adjust a height of the seat relative to the pedestal base, wherein the height adjustment mechanism includes a limit switch that is configured to limit an amount of movement of the height adjustment mechanism ; and coupling the pedestal base to the height adjustment mechanism, as taught by '609 on the method of Stumpf so as to facilitate an ease of operating of a chair. (Figs1-3, Abstract)

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Regarding Claim 11, Official notice is taken that adjusting an amount of stroke travel for the height adjustment mechanism is old and well known in the art and to employ this step on the method of '609 would have been obvious to one of skilled in the art.

*Allowable Subject Matter*

6. Claims 2-10 and 12-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John C. Hong whose telephone number is 703-305-0779. The examiner can normally be reached on M-F(07:00-16:30)First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



John C. Hong  
Primary Examiner  
Art Unit 3726

jh  
September 21, 2003